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SAMUEL W. PENNYPACKER.

A REPLY

OF THE

BOARD OF MANAGERS,

TO A REPORT OF A

Committee of the Stockholders,

OF THE

Columbia, Pa. Bridge Company.

COLUMBIA, PA.

PRINTED BY WILLIAM GREER.

.....

1820.

TO THE

STOCKHOLDERS

IN THE

Columbia, Pa. Bridge Company.

IN replying to the report of the Committee, made at a meeting of the Stockholders, on the 4th of May, we hope to be excused if we go into particulars not immediately connected with that report.

We apprehend, you cannot form a correct judgment of the conduct of the Board, without having an opertunity of dispassionately and coolly reviewing their proceedings: for this purpose, we shall endeavor to give you as clear and circumstantial a statement of their several transactions, with the complicated difficulties attendant on them, as this mode of information will reasonably admit of, from the time of passing the Resolution for the sale of additional, or New Stock, up to the time the Act for enabling this Company to collect their debts, was obtained of the Legislature.

On the 17th of June, 1813, the Board passed the said Resolution, which headed the Subscription paper, and is as follows:

"*Resolved*, that the conditions on which the following "Subscriptions are to be taken, are, that if the President "and Managers are authorized by the Stockholders legally "to loan their surplus funds, one thousand shares being sub-"scribed, the Subscribers shall then be considered and held "as stockholders: but if there be not one thousand shares "subscribed within six months after the passing such By-

"Law of the stockholders, or if such By-Law shall be "proven to be illegal, then the following subscribers shall "be at liberty to give up their shares, and all monies paid "thereon, shall be refunded by the Treasurer on demand." Which Resolution and proceedings the Stockholders adopted and fully ratified, by authorizing the Board to comply with the provisions of it, (as per By-Law of 5th. of July following.)

On the 13th of September, 1813, the Committee appointed for that purpose, reported the sale of 1050 shares of new stock, subscribed agreeably to the aforesaid resolution.

On the 27th of December following, the Board petitioned the Legislature, by which they informed that body of their proceedings, as follows:

"*To the Senate and House of Representatives of the Commonwealth of Pennsylvania, in General Assembly met,* the Petition of the President. Managers, and Company, for erecting a Bridge over the river Susquehanna, at or near the town of Columbia, in the county of Lancaster,

"*Respectfully represents,*

"That being enccuraged by the Act of the Legislature of 1812, (being a Supplement to an Act passed, 1809,) authorizing the Governor to pay to the Company for erecting a Bridge over the North East branch of the river Susquehanna, at the town of Northumberland, certain instalments on the Stock therein held by the Legislature, as the work progressed, to expect the same indulgence from the last session of the Legislature: we were, under this expectation, induced to enter into a contract with Jonathan Walcott & Co. for the erection of our Bridge, in which we bound the company to pay for the same one hundred and fifty thousand dollars, as the work progressed. But being disappointed by not getting the money from the State, as we expected

to do, we found ourselves under the necessity of opening Books for the sale of the residue of the Capital Stock of the Company, (excepting the 900 shares which we considered as engaged to the Commonwealth) that we might be able in good faith to comply with our engagements. Therefore, to induce our fellow citizens to take the Stock, the Board of Managers resolved, that if authorized by a By-Law of the Stockholders, they would employ any balance that might remain, over and above the sum vested in the Bridge, on loan, purchase, discount, or otherwise, as they might be authorized and directed to do; which being done, we find we shall have, after the Bridge is completed, a balance of about two hundred and twenty five thousand dollars to loan, under the authority of the following By-Law, after deducting (for enlarging the piers, and for other incidental expenses) about twenty-five thousand dollars."

BY-LAW.

"WHEREAS, it now appears that the erection of said Bridge is, by contract, assured to be completed for the sum of one hundred and seventy-five thousand dollars, which, after discharging the incidental expenses, must leave a large balance of the original capital stock, designed by the Legislature to uphold and render the said establishment permanent, unemployed. And whereas, the continued support of the said Bridge is an object of more immediate hazard than its erection, and was contemplated, by the Act of Incorporation, as one of the most prominent objects of its policy in appropriating the said Capital Stock. And whereas, the omission to employ the balance of the said capital stock in active and productive use, while a primary and vital object of said incorporation is even unassayed, would be a gross neglect of the duty which the company owe to themselves and

to society, in the conduct of this great internal improvement. And whereas, combining the balance of said capital stock with the credit of the company, would most effectually aid the great national undertaking, a permanent Bridge, which the Act of Incorporation meant to effectuate. Therefore,

BE IT ORDAINED AND DECLARED, That the President and Managers of the company be, and they hereby are, authorized & empowered to employ the whole balance of the capital stock of the company on loan, or purchase, or discount, or otherwise, as to them, or a majority of them, shall appear best adapted to promote all the objects of the said Act of Incorporation, and to employ the proceeds thereof to defray the necessary expenses incidental to the organization and establishment of the plan of proceeding adopted in the first instance, and to divide the residue of the proceeds and profits, or as much thereof as shall be thought adviseable, having respect to the objects of the act of incorporation, in semiannual dividends, to and amongst the stockholders, according to their several shares."

"At the meeting of the Board of Managers, next following the passing of said By-Law, they resolved, agreeably thereto, to employ the balance of the capital stock of the company, on loan or discount; which they have endeavoured faithfully to execute.

"We therefore hope that your honorable bodies will, under this view of the subject, authorize the Governor to pay for the stock, which he was authorized to subscribe for, on the same terms as individual stockholders do, as it has placed the money in a fund to draw immediate interest, and particularly as the work of the bridge is so far advanced, as to leave little room to doubt of its being completed some time next autumn, on a plan by which the superstructure is erected and finished from pier to pier, as they are ready to receive it.

"We also beg leave to call the attention of your honourable bodies to that section of the law which fixes the toll, by which it appears, that a horse and chair, or a horse and cart, pays no more than a man and horse; an error which we conceive only necessary to point out, to have altered to 50 cents for horse and chair, and 37½ cents for horse and cart.

"And we further beg leave to request, that your honourable bodies will indulge us, by changing our title, which we find unnecessarily long and inconvenient, to the following, to wit, "*The Columbia, Penn. Bridge Company.*" On behalf of the Board,

WILLIAM WRIGHT, *President.*"

On the 3d of February, 1814, the Board commenced discounting, with $44,000, in specie and Philadelphia bank notes, in the Treasury.

On the 9th of same month, *Thomas Eagan* wrote as follows, to William J. Duane, but which we were ignorant of for some time.

Elizabethtown, February 9th, 1814.

DEAR SIR,

Although I have not the pleasure of being personally acquainted with you, yet I am induced, from your very correct opinion on Banking, & upon a consultation of a few of my friends, to state a few facts relating to the subject of a Bill that has passed the Senate a few days ago, granting the payment to the President, Managers, and Company, of the Columbia Bridge, the one half of the $90,000, granted by an act of the Legislature for the purpose of completing the Bridge; the senate, no doubt, were not informed of all the facts, or they would have refused to grant a cent until a system of Banking, that has been set agoing by the President and Managers, was done away. If the State is to be a party, the fact ought first clearly to be made

known, a few of them are, some months ago the President and Managers commenced Banking without a dollar of capital, they issued or exchanged notes, for those of other Banks, and by that means collected a few hundred Dollars of specie, and, for a few weeks past, they have been going on making discounts to a large amount. To show that it is a sanction that they want to their unwarantable proceedings (more than any thing else.)

The first contract for completing the Bridge was $155,000, which has since been encreased by additional expenses for Banking, &c. to $175,000, the amount of the first subscription with the 90,000 dollars, granted by the State, making in all $210,000, and to it 1,000 shares of additional stock has been subscribed, on condition, to be withdrawn should they not be successful in their System of Banking. If not successful, the state, with the first stockholders, will be heavy lossers, they having gone to, and are going on at, great expense for the purpose of Banking, to add to them, they lately purchased a house at 12,000 dollars and now are fitting it up at a considerable expense for a Banking house; now if the Legislature pass the bill into a law, will not the State be considered a party in the whole (undoubtedly the Bank will consider it so by receiving the first $45,000, when the bank is in opperation.) Now as there was nothing like Banking contemplated by the law to incorporate a Company to build the bridge, nor in granting the $90,000, towards completing it, neither was it ever expected by the first honest subscribers to the stock, that the law could be construed to answer cunning and designing. Let them undo the Banking and the state pay the money, as the first subscribers and the Legislature intended it should be, for the purpose only of finishing the Bridge.

And it is very doubtful whether it will be profitable to have a bank attached to the Bridge, for the Philadelphia Bank has a Branch there, with a capital quite sufficient

for all wants, considering the number of banks around the place (Lancaster, Marietta, York, &c.) Should any of the within facts be denied by any person, they will be proven by Gentlemen of the first respectability in the place, who will cheerfully attend for the purpose.

I am Sir, with the greatest esteem,

Your humble servant,

Signed, THOMAS EAGAN.

WM. J. DUANE, Esq.

A COPY.

Which we presume occasioned the enactment of the following section to the general banking law of 21st of March, 1814.

"Section 13. *And be it further enacted by the authority aforesaid*, That all orders and notes, in the manner or nature of bank notes, which shall be issued after the first day of January next, by any unlawful and unincorporated bank, and all orders and notes, payable to bearer or order, in the manner or nature of bank notes, which shall be issued after said day, by any individual or corporation not incorporated for banking purposes, by this or a special act of the general assembly for that purpose, shall be absolutely void and have no effect either in law or equity, and irrecoverable in any court within this commonwealth: and all notes taken by and discounted, and all contracts relative to business usually done by banking companies, which shall be made with such unlawful and unincorporated banks, individual, or corporation aforesaid, after said day, shall, in like manner, be absolutely null and void, and shall have no effect whatsoever either in law or equity, and irrecoverable in any court in this commonwealth. And it shall, moreover, be the duty of every judge, or justice of the peace, within this commonwealth, to dismiss, with treble costs, any suit brought for the recovery of any money on the fulfilment of any contract

or engagement, as soon as the same is discovered to have a connection of any nature or kind with any such unlawful or unincorporated bank, individual, or corporation, aforesaid, so as aforesaid published."

This, together with one passed in 1817, authorizing certain persons, under certain regulations, to throw open our gates for violating the aforesaid acts, called forth all the wisdom and energy of the Board to protect this company from impending ruin.

It may be asked, why we did not petition the legislature for relief from the penalties of these several acts? We did petition that body, but were rejected. The reasons why we did not then close the banking part of this institution is set forth in the following petition presented some time after.

To the Senate and House of Representatives of the Commonwealth of Pennsylvania.

The President, Managers, and Company, for erecting a Bridge over the river Susquehanna, in the county of Lancaster, at or near the town of Columbia,

Respectfully represent,

THAT in presenting to your honorable Bodies a statement of the accounts of the Company correspondent with the 14th section of the act of incorporation (a duty which we had not overlooked) the Board of Managers deem it of great importance to the Company, the Public and the State, that a full, clear and candid statement of the affairs of the Company, from its commencement to the present period, should also be presented to the view of the present Legislature: shewing the motives that govérned, and the means which brought this great national improvement to so speedy and permanent a conclusion, under the most trying privations and embarrasments.

By the act of Incorporation, the company were authorised to raise $400,000, to erect and support the Bridge. The enlightened policy which gave rise to the act made

the state stockholders to the amount of $90,000,—the one half to be paid upon the completion of the abutments and piers, and the other moiety upon the superstructure's being finished,—thus resting the eminent hazard of this great novel and untried experiment upon individual enterprise, when it would naturally be most formidable and forbidding. After very laborious and protracted efforts, a subscription was raised barely sufficient to acquire the right to a charter: which was granted in 1811. The Company lost no time in inviting proposals; from which it appeared, that the mode of proceeding, which we apprehend was contemplated by the Legislature, was at war with economy and expedition—two vital principles in so extensive and hazardous an undertaking, as the artizans considered the piers and superstructure's going on together as mutually accommodating, expeditious, and much less expensive. The Company believed these to be strong and highly rational grounds to induce them to alter the *form* (evidently prescribed by the Act making appropriations) the more effectually and expeditiously to ensure the *substance* of it. They accordingly contracted for the piers and superstructure to progress together; which has been most salutary in its effects in anticipating that delay in the execution which was calculated on by all. The contract was made in July 1813; by which the Company was bound to pay the contractors $150,000, as the work progressed: relying on the Legislature when they should convene, granting the same aid that they granted to the Bridge Company at Northumberland. The Legislature at their next session in 1812-13 were informed of this modification in the mode of conducting the undertaking; and asked to modify their subscription accordingly to enable the Company to meet their engagements: and yet, notwithstanding its reasonableness, from some cause it failed.

While the application was before the Legislature, the Company were using their best endeavours to collect the individual subscriptions; which they soon found to be very unproductive, owing to the death and removal of many, the insolvency of others, and the backwardness and reluctance of the rest, as soon as they found that the application to the Legislature had failed. The result was, that of $123,000, which had been subscribed, only $78,000 was collected: which would certainly have been much less, if we had not established the office of Discount and Deposite.

In the spring of 1813 the undertakers, with their workmen drawn from Connecticut to the number of between one and two hundred, presented themselves in a character and attitude well provided to enter upon the undertaking. The board found it a duty due to themselves and to them, frankly to declare to the undertakers the untoward circumstances attending the subscription, and their application to the legislature. Every arm nerved for the arduous task was unbraced; and this most important undertaking was just in the act of dissolving in irretrievable ruin, and with most extensive injury to the undertakers, as well as extreme mortification to the Board and disappointment to the public.

Amidst this gloom and despodency, a single ray of hope pierced the almost impenetrable darkness, re-animated confidence, and led to honor and safety: The Board, finding that nothing could inspire public confidence and daring enterprize which did not insure the stability of the Bridge after it should be erected, appealed to the people (then warmed with the spirit of Banking) to rescue the undertaking from its impending fall: Proposals were made under certain conditions (as stated in the following resolution of the Board) that upon the capital of $400,000 being subscribed, the surplus capital of $220,000 designed to perpetuate the Bridge, should be erected into an office

of Discount and Deposite to ensure that object. The people applauded the design; subscribed nearly the whole capital remaining; paid it in—and thus built the Bridge, and provided a fund always at hand for its support against every contingency. The completion of the whole undertaking having thus devolved upon the individual stockholders, contrary to the liberal and enlightened policy of the act making appropriations, they met the pressure and subdued it;—by which this first and most extensive of internal improvements was completed out of their own resources alone. The Executive did, with promptness and accommodation, pay $90,000, the amount of the 900 shares of the capital stock of the Company subscribed by the Governor agreeably to the act of the Legislature entitled an "Act making appropriations," &c.

This short review of the mode in which this arduous and hazardous enterprise has been effected, will enable the Legislature justly to take a view of the state of the Company at the time the Board adopted the following resolution:—

"*Resolved*, That the conditions on which the following "subsriptions are to be taken, is, that if the President and "Managers are authorised by the stockholders legally to "loan their surplus funds, one thousand shares being "subscribed, the subscribers shall then be considered and "held as stockholders;—but if there be not one thousand "shares subscribed within six months after the passing of "such By-law of the stockholders, or if such By-law shall "be proven to be illegal, then the following subscribers "shall be at liberty to give up their shares, and all mo-"nies paid thereon shall be refunded by the Treasurer "on demand."

It ought to be remembered by those who object to such proceedings, that in the city of Philadelphia, and in many counties, the people were associating for the purpose of Banking directly in opposition to the Act of the Legisla-

ture of 1810. *They* were rewarded with charters for the express purpose of Banking; whilst *this Company*, while carrying on one of the greatest public internal improvements ever made in the state, were left embarrassed by the Act of March 1814; and that at a period when we had no alternative but to persevere in the manner and form in which we had commenced, or to abandon the undertaking.

It must be clear to your honorable bodies that not only the Company and the state, but the community at large, are deeply interested in the ultimate success of this establishment in its present form: Because, if it be not continued, a large portion of its funds must (agreeably to the terms on which the stock was taken) be returned to the subscribers; thus leaving the Company in debt, and of course not in a situation to repair any serious damage which the Bridge might receive; but which, in our present situation, we are always ready promptly to effect. It is also of importance to such a trade down the waters of the Susquehanna; because if the funds thus held in reserve for the benefit of the Bridge (together with those of the Branch of the Philadelphia Bank, which it is said is preparing to leave this place) are withdrawn, a large portion of such articles as have heretofore found a good market at this place, must seek another: as then there would not be sufficient funds here to purchase them.

We have been charged with violating the laws of the state by loaning our surplus funds. To this charge we plead 'Not Guilty,' at least at the time we commenced; at which time there was no law against it. The resolution of the Board states, in the most unequivocal terms, that it was only on condition that it was legal. In our belief of its legality we were supported by the opinion of one of the first law characters in the state previous to our establishing the office of Discount and Deposite, and by

which we have been governed. It is true, the Act of March 1814 was calculated to prevent our using the funds of the Company in that way—and to that we were disposed to yield; but your honorable bodies must be sensible of the difficulties of winding up an institution of this kind immediately; and meeting with encouragement from the friendly disposition manifested by the Executive of the state, we were induced to hope, that those funds, which were in our opinion, of such vast importance to the future wellfare of the Bridge, (consequently to the public, the first stockholders and the state) might yet be retained; and therefore believed, that to relinquish them under such flattering encouragement, would be a violation of the trust reposed in us by the stockholders—we allude to the application of the Executive in the year 1815, for a loan of $45,000 for the use of the Commonwealth; which we granted. We allude also to the Treasurer of the state receiving the dividends; a large proportion of which was stated by us to be "for discounts received for monies loaned." Of $11,700 which we have paid into the State Treasury, $6,750 were for discounts, the proceeds of our surplus funds.

The Bridge which is 1 mile and 25 perches in length supported by 51 stone piers raised 23 feet above the water at present stands the Company in $230,000,

Of this sum the State owns	$90,000	
Original subscribers	78,000	
	$168,000	
Contingent Fund (arising principally from the proceeds of our surplus fund,)	30,000	
	$198,000	
Thus we shall, if the late subscribers are to have their money refunded, be indebted	32,000	
		$230,000

We have said it was important to the original stockholders and to the state; because if the monies paid in by the other stockholders are to be refunded, not only the present debt of $32,000, but any future damages the bridge may sustain, must fall on such *original* stockholders and the state. Instead of which, if the enlightened policy which induced former sessions of the Legislature to establish the Company, guide the present councils of the state, so as to induce them to recognize the institution in its present form, under such regulations as will enable us to retain those funds arising from the sale for stock subscribed under the provisions of the aforesaid resolution of the Board, amounting to 232,000 dollars—we shall have a surplus of about 200.000 dollars for a fund always at hand "to guard against the decay, the repairing and rebuilding the said bridge, as time and accident may render necessary;" which the 12th section of the act of Incorporation provides for. After premising the foregoing, we humbly hope that your honorable bodies will not impute any thing improper either in the motives or the conduct of the Company or their officers; but that you will reward their indefatigable exertions, by granting to this Company *also*, a special charter.

Signed on behalf of the Company,

WILLIAM WRIGHT, President.

P. S. Being very desirous to avoid the too common partice of harrassing the Legislature with Committees;—and knowing that when a petition is read but *once* in the House, much of the matter must be in a great measure forgotten by the members generally, we have directed a number of copies of this to be printed; and one to be given to each member of the Legislature, in order that they may be fully acquainted with the proceedings of the Company.

From which it must be apparent that the legislature approved of our taking back the new stock and returning all monies paid thereon, agreeably to the resolution of the Board under which it was subscribed; or, we presume, they would have passed some resolution expressive of their disapprobation.

Some time after we were rejected by the legislature, we were informed of the aforesaid letter from Thomas Eagan to William J. Duane. Which letter, we have no doubt, was the cause of defeating our application to that body, and placed this Company in the difficulties which they have had to encounter.

On receiving this information, we immediately appointed a committee to wait on Thomas Eagan, who reported that Thomas Eagan informed them, that he had been requested to write the said letter by John Haldeman, who had given him the statement which he had made to Wm. J. Duane. The committee was continued, to call on John Haldeman and know if he was the author of that report, and if he was, to inform him, that if he chose to bring some respectable person with him, the Board would condescend to satisfy them, by a reference to the books, that the report was false and entirely without foundation. The committee complied with their instructions, and some time after, John Haldeman and Jacob Gish called at the office, when we shewed them, that at the time this letter was written, we loaned $4,000, and had $44,000 in the Treasury, as will still appear by having reference to our books.

Thus detected, we leave it to the Company to judge, what grounds there are to suspect the motives which govern this individual in his several acts relative to this Board, and how far we are justifiable in suspecting that similar opposition was made from the same underhanded source, to several similar applications which were made

to succeeding legislatures: for we made many without success.

When we applied at the last session, we were very cautious not to let it be much known, except to the legislature, and have some doubts whether it was known to many at this distance from the seat of government, till the Act had passed both houses of the legislature.

When John Haldeman was asked why he was so much opposed to our institution, he replied, that it was because we were going in opposition to the Law. He was then asked if he had not subscribed to Henry Cassel's bank; he acknowledged that he had. He was then told that we had agreed to use our funds in that form, provided it was legal; and at that time there was no special Act prohibiting our proceeding: but that that bank, which he had subscribed to, had associated directly in opposition to the Law. From this difficulty he could not extricate himself, grew angry, and walked off. We should have been glad to have let those acts of hostility to this institution, slept in oblivion, but are compelled, in self defence, to bring them to light.

On the constitutionality of the aforesaid acts of the legislature, we took the opinions of Horace Binney and Joseph Hopkinson, Esquires, and received the following opinions:

"I have, with great attention, considered the Act of Incorporation of the Columbia Bridge Company, passed the 28th day of March, A. D. 1809, with reference to the question hereafter stated; and this attention has been given to the subject, with no inconsiderable desire that an opinion favorable to the views of those who have submitted the question to me, might be found to be justified by the Act of Incorporation. If I am unable to say that such an opinion is justified, it is because no inclination can get over the provisions of the charter, and the general rules of Law that must be applied to its interpretation.

The Question is, whether the Corporation above refered to have, by their charter, the right of employing what they call their surplus funds in the buisiness of Banking? I state the question in this way, because this is in reality the object of the Corporation, and any disguise of the object under equivocal terms would be quite useless.

The powers of a corporation are to be sought for in the charter or law which creates it; and such charter is to be explained according to certain general principles or rules of construction, that may be considered as applicable to all charters. If the object or design of a charter is limited, the powers of the Body Corporate must be considered as limited by the object. No general capacity to act at discretion in pursuit of other objects, can be implied from the grant of corporate powers even in general terms. It is not like the case of an individual, who being possessed of general powers may use them in any manner not prohibited by Law; but it is the case of an artificial body created for a particular purpose, to attain a particular end, all of whose powers must therefore be construed with reference to that end, and limited by it. If the end be a single one, I hold it to be a prefectly clear rule of construction, that its powers, however ample, must be taken to be granted for the attainment of this end; and that no general powers will make it lawful to pursue other objects, unless such other objects are expressed in the charter, or are very plainly implied from what is expressd. By the general powers here referred to, I mean those of suing and being sued, of making By-laws for the regulation of their corporate property and concerns, of receiving subscriptions for their corporate capital, of holding their capital, its increase and profits, and of calling in and disposing of the money subscribed. If there be one object, and only one object in view, all those powers must be exercised with reference to, and for the attainment of, this object and no other.

The first inquiry then is, what is the object of the act incorporating the Company in question. I have looked over it with great care section by section, and I perceive no other object of any kind but the erection and support of a Bridge over the Susquehanna. The subscribing of money for any other object, or the calling for it from the Stockholders and applying it to any other object, is no where authorized by the Law; and in my opinion it ought to appear most clearly, before any other subscription, call, or application, than such as has the Bridge for its object, can be justified. Subscriptions with a view to loan or discount the money thus raised, however they may be said to be connected, with a purpose of sustaining and rebuilding the bridge, have in reality no reference whatever to this principal object—the law does not authorize them, it does not protect those who call for them or those who pay them in. Every thing done in relation to such money is done by colour of corporate powers, and not in the legitimate exercise of them, and there is no obstacle whatever to such legislative prohibitions and penalties as may be thought proper to restrain the corporation to the line of its lawful powers, and to punish any excess beyondthem.

This is my view of the question, without going more particularly into detail: but as various reasons have been suggested to me in support of this right to lend money on discount, I think it proper to express my opinion upon them, that it may not be supposed I have overlooked them.

1. It is said the Law of Incorporation authorizes a much larger capital than was necessary for the Bridge, and therefore contemplated a surplus capital not to be invested in the Bridge. The power of using this surplus is therefore fairly to be implied, and the manner or extent of its use must be discretionary with the Company.

If a surplus were clearly contemplated by the Law, it would become necessary to consider a question of great ni-

cety, how far such a power of using this at discretion was implied, as would in effect make this Corporation a Banking Company. And I think there would be great difficulties in the way of such a provision. The distinction between Corporations for Banking, and those for other purposes, was so well known at the date of this Law, together with the profit which the Legislature made it a standing rule to extract from all those of the former description, that it would be no easy matter to imply from the mere possession of a surplus capital, the right to apply it to the various purposes of Banking. Such an implication I have no doubt would be considered an unfair one, not within the intention of the Legislature, and therefore not to be sustained by the judiciary. The power to invest the surplus so as to make it productive might perhaps be inferred, and fairly, though no express power so to use it was given; but although the line between such a use of it as would be necessary or fit, and that complex use of it which constitutes Banking may perhaps not easily be drawn, yet I think there never could be a doubt which was one and which the other sort of operation, and that the latter would be held to be unwarranted by the Law.

But a more decisive answer is that no such surplus is contemplated.

The 1st section authorises a subscription of 4000 shares at 100 dollars each, to be paid in such manner and proportions as should be determined by the President and Managers in pursuance of the Act of Incorporation: each subscriber to pay $5 a share at the time of entering his name as a subscriber.

The 6th section authorises the President and Managers to meet at such times as should be agreed on for transacting the business of the company, a quorum of whom should have authority to appoint such engineers, artists, assistants and workmen as they should deem ne-

cessary to the erection of the said bridge; they also have power to make contracts, to ascertain the times, manner, and proportion in which the stockholders should pay the money due on their respective shares, to draw orders on the treasurer, &c. and to do all such other matters and things as by that Act or by the By-laws, orders, and regulations, of the company should be confided to them.

The 9th section gives authority in case the proposed bridge cannot be completed without extending the number of shares, to extend them so far as may be necessary to complete the proposed bridge.

The 12th directs the president, managers, & co. to keep a just account of all monies received by their collectors for tolls, and to make a dividend of the income and profits thereof among all the subscribers, first deducting all contingent charges, and such proportion of the said income, as might be necessary for a fund to provide against the decay, the repairing, or the rebuilding of the said bridge.

From all these sections, I think it incontestibly appears, not only that a surplus was not contemplated, but the very reverse, that the shares might be extended beyond the original quantity, or in other words, that the original capital might be deficient; and in case the original quantity subscribed was more than sufficient, the difficulty was intended to be obviated by calling for instalments merely. The fact is that the requisite sum was uncertain; if $400000 was too much, the President and Managers were of course to call only for as much as should be necessary; if too little, the subscriptions were to be enlarged. There is no idea of surplus to be found in the law, nor of any source from which income is to be derived but from the tolls. The Bridge is the sole object, its tolls the sole revenue, and if a surplus should have happened to exist after the work was finished, it would have been most clearly a case for which the Legislature made no provision.

2. It is said the President and Managers have proceeded to Banking operations under a By-law which authorized subscriptions for that object beyond the amount necessary for the Bridge.

To this I answer, that a By-law contrary to the charter has no force, and therefore it is but coming to the same difficulty through a different medium, to say that the By-law authorizes it. In my opinion the By-law is not valid, to the extent of authorizing Banking operations.

3. It is said that a subsequent Law for incorporating the Harrisburg Bridge Company, directs that if a surplus, beyond the charges and expenses of erecting the Bridge shall remain in the treasurer's hands, it shall be returned as part of the dividend to the Stockholders; and that there is no analogous provision in the Act for incorporating the Columbia Bridge Company.

I am by no means satisfied that such a provision was necessary, or that this is not to be implied from the very nature and objects of the subscription; for the instalments being called in merely to build the bridge, if more was so paid in than was necessary, the obvious duty of the Company was to return it. Without however relying upon this circumstance, I am of opinion that the want of such a clause in the charter of the Columbia Bridge Company, is of no importance, unless it can be shewn that the Legislature contemplated the existence of a surplus, which I think they did not

4. Finally, it is said that the treasurer of the State has received dividends upon the State subscription, knowing distinctly that part proceeded from tolls and part from discounts, and that the governor has borrowed money from the Company.

The answer to this is, that the acts of the treasurer and of the governor, can have no effect upon the true construction of the charter.

Upon the whole I am of opinion that no authority to lend money upon discounts, or to carry on any other operations than such as are properly connected with the Bridge, is to be found expressly or by any fair implication in the charter in question; and therefore, that the Legislature are competent to pass any laws providing penalties against the Company or its officers for carrying on the operations of a Bank.

Having been requested to examine the act of 21 March 1814, and the late act 22 March 1817, to ascertain whether there is any provision in the latter by which the effect of the 31st section of the former is taken away, or may be in any manner evaded, I have done so, and am of opinion, that although the capacity of an individual to sue an unlawful Bank, which was taken away by the said 13th section, is by the late law restored, the capacity of such a Bank to sue upon notes discounted or Bank contracts, is not restored, but remains as it was under the act of 21 March 1814. It appears to me that without legislative assistance, the difficulties in the way of such a Bank will be invincible, if a defendant or the Court shall think proper to start them. The mode suggested to me, of procuring a creditor of the Company to levy on the debts of the Company, according to sec. 3, of the act of 22 March, 1817, will not answer; the levy there spoken of is, I apprehend, confined to the case of suits and judgments for the penalty incurred by violating the provisions of that act.

HOR. BINNEY.

28 April, 1817."

"In considering a question which implicates the authority of an act done by the Legislature, especially when it is our intention to govern our conduct in an important concern, according to the opinion we may form; we should always bear in mind that the point in controversy must be finally decided by a tribunal, extremely averse to pronounce a decree of condemnation, on any thing that has been enacted by the Legislative branch of the government: unless, therefore, the act complained of, be an obvious and clear violation of the Constitution, it would be a vain attempt to call upon the courts of justice, to pronounce it void, and refuse their obedience to it.

We must, under this impression, examine the question now under consideration: which is, whether the act passed on the 21st day of March, 1814, entitled "An act to regulate Banks," which declares, that all orders and notes in nature of bank notes, which shall be issued by any unlawful or unincorporated bank, or by any association or corporation, which has not been incorporated as a banking company for a term of years, shall be absolutely null and void, and have no effect either in law or equity, and irrecoverable in any court within this commonwealth; and so of all notes taken and discounted by such associations or corporations, may be extended to and enforced against "the President, Managers, and Company, for erecting a bridge over the Susquehanna river, in the county of Lancaster, at or near the town of Columbia;" which company was incorporated on the 28th day of March, 1809. It is very clear that if the power to issue notes in the nature of bank notes, and to take and discount notes, was given to this corporation by

their charter, the Legislature could have no right or constitutional power, to take these privileges from the corporation, by any subsequent act.

The question then results in the mere inquiry, whether the charter of the Bridge Company, does confer upon them, the rights now contended for.— The assumption of these rights by the company, and even an acquiescence in them by certain officers of the government, for the convenience and accommodation of the government, I consider as nothing before a court, called upon to decide the question by the Law, and not by practices, unauthorized by the Law. Is the right then to carry on banking operations to be found expressly or clearly given by the charter of the Bridge Company? was this the object of the stockholders in the investment of their money, or of the Legislature in granting them a charter of incorporation? I confess it seems to me, upon examining the act, that no such power is given, or was intended or expected to be given, by either of the parties; that is by the Legislature granting the charter, or the Company receiving it; nor can any such power be fairly deduced from any grant in the act of incorporation. The direct and avowed object of the act is to build a bridge over the river Susquehanna; the money is subscribed for this purpose, the company is formed for this purpose, the officers of the company are created and chosen for this purpose; and nothing in the nature of a bank to lend money by discounting notes, or to issue their own notes, in the form and manner that banks do, is to be found in any part of the act. The corporation may make By-Laws for the well-ordering of the affairs of the company;

but those affairs, in the meaning and intention of the act, relate to the building and sustaining of a Bridge, and not to the issuing of Bank paper, and discounting notes. There is no capital contemplated to be used, but what shall be necessary to build & complete the bridge. There are no modes of profit held out for dividends to the stockholders, but the receipt of toll, which is to be encreased so as to allow a reasonable interest; but reduced, in case the dividends shall exceed what is deemed a reasonable interest, or profit on the stock.

I see not one feature of the Banking power in the whole act; & there are certainly many provisions never found in a Banking establishment, and inconsistant with it. The Dividends are to be made out of the toll, first deducting all contingent costs, reserving a fund for preserving the Bridge, repairing and rebuilding it, as may be necessary. I cannot, on the whole view of the charter, doubt that banking powers are not given, and were never intended to be given, by either the party granting or the party receiving it; and of course that the subsequent act of the Legislature forbidding and preventing this company from carrying on banking operations, does not in any respect violate or interfere with their Charter of incorporation.

As to the proposed mode of getting in the monies, due to the Company, on notes they have discounted, I should presume it may be resorted to without danger; at least the experiment can do no harm; but I have not been able to procure the law of the last session of the Legislature, under which it is supposed to be allowed and protected. It must however be hoped that those persons who have borrowed the mo-

ney, and received the accommodation of the Company, are of a description, not to resort to such means, to avoid the payment of a debt, so entirely just and unquestionable.

Jos. Hopkinson.

Philad. April 29, 1817.

On receiving these opinions we ceased to discount, with very few exceptions, and turned our attention to securing our discounted paper; and was advised to take bonds, payable to the company, &c. We first strove to get them payable in 90 days; a few persons came into the measure, but by no means general; which induced the Board to pass that of August 26, 1819.

As William Wright, the late President of the Board, is particularly and, we think, ungenerously pointed at in the report, we are bound to state the cause of his becoming so much indebted to this institution: In the year 1814, a company was formed, by the name of the "Wrightsville Canal Company," for the purpose of digging a canal round the Chickies falls, in the river Susquehanna; during the prosecution of the work, William Wright, who acted as their treasurer or agent, borrowed, from time to time, of this company, for the use of the said canal company, about $ 20,000, which the Board knew, at the time it was borrowed, was for the use of the said canal company, to be refunded by the several parties in said canal, as soon as the work should be completed, or as soon as a settlement should be made between the said parties. But when they were called on by some of the partners, to come to a setlement, two of their number, who were largely interested, refused to pay their part of the money borrowed, or to give their separate obligations for it to this company. And had we attempted to have compelled payment from those

individuals, whom we well knew to be partners in the company, (one of them was a member of this Board when the money was borrowed) we have every reason to believe they would have availed themselves of the want of Law on our part, and thus extricated themselves from their engagements.

William Wright, notwithstanding the difficulty these persons placed him in, then offered his own bond, with sureties, for the sum borrowed, and only asked for indulgence till he could have time to recover it of the partners, who had employed or authorized him to borrow it, which the Board thought reasonable. He, accordingly, gave bonds, signed by himself and others of the canal company, for the sum due this company, trusting to the honour of the Board not to push him till he could recover it from those for whose use it was obtained. Suits were brought & other means used by some of the canal company, to recover of others their several portions of the debt contracted, &c. A judgment has been obtained at Law against one, and bonds and mortgage given by the other, which were calculated on and intended for discharging the aforesaid bonds, &c. as will be shewn hereafter.

In answer to the charge for purchasing the mortgage of Jonathan Mifflin, &c. we purchased it when there was no idea of any dispute respecting the payment of it, and we still think it as good security as can be given. We were induced to purchase it to secure near $2,000, which we knew to be lost to this company, but which Jonathan Mifflin was able to secure to himself in payment to one of the drawers and endorser, and which we paid to the said Jonathan Mifflin in part of the consideration given for the said bonds, mortgage, &c.

In consequence of Jonathan Mifflin's deafness, Wm. Wright was generally called on by Jonathan Mifflin, to transact such business for him: he had, consequently,

became well acquainted with all the circumstances connected with the transactions between Jonathan Mifflin and Jacob Kline and John Herr, whose bond and mortgage we had purchased of Jonathan Mifflin. It, therefore, by direction of our attorney, became necessary, when the payment of the said bonds became disputed, to qualify Wm. Wright to become a legal witness on behalf of the company, as by reference to his deposition in the hands of our attornies will appear. It was not necessary then to be governed by the resolution of the 16th of Sep. 1819, to induce the Board to purchase his stock, it would have been indispensible if no such resolution had been adopted. At the time of transferring the stock, Wm. Wright was desirous of lifting a bond which the amount of his stock would not enable him to do. He, therefore, proposed to give his nephew John L. Wright's bond, signed by John L. Wright and William Wright, for $3,500, which sum he had borrowed for his nephew whilst a minor; the payment of which, John L. Wright was disposed, on becoming of age, to take upon himself: he therefore made them payable in five equal annual payments, agreeably to the following Resolution of the Board, (when nine members were present) passed the 26th of August, 1819, Resolved, That bonds, with approved security, be given for the paper belonging to this company, payable in five equal annual payments, with interest: and the President and Treasurer are to attend to having the same done agreeably to the foregoing Resolution; the security to be approved of by the Board: and without security approved of by the Board, there never were any bonds taken, the report of the committee to the contrary notwithstanding.

The board, at the meeting when the bonds were offered, had only to judge whether they were good or not: when Wm. Wright first took his seat as pre-

sident of the board, he stated, that when the board were divided on the passing of a note, he never would give the casting vote in favor of it; and from which resolution he has never been known to depart; he therefore, must be clear of the charge of approving of any paper in which he was interested, and particularly at the time of accepting of these bonds, as the other four were unanimous in favour of receiving them. The mortgage, which the report renders mysterious, was obtained by Wm. Wright on property of Caleb Kirk in the state of Delaware, for a debt due from him as one of the aforesaid canal company; and with the approbation of some of the board, made payable in eight equal annual payments, and transferred to the bridge company in payment of a part of the aforesaid debt; but subjecting Wm. Wright to the trouble, risque, and expense, of collecting the money for the said bonds, as they repectively became due. But as Wm. Wright was no longer a member of the board, he proposed to the board, to give him back the said bonds and mortgage and receive new stock in payment, for which he had made an arrangement at par: provided the board were willing. The board considering themselves bound by the resolution of 16th of September, 1819, agreed to the exchange: which relieved *Wm. Wright* from the trouble, risque, and expense, of collecting the money for said bonds. A reference to the number of shares transferred, proves they were taken at par, notwithstanding John Haldeman reported they were bought at *sixty dollars per share.*

Among other difficulties which we had to encounter, we were frequently drawn on by Haldeman's

clerks for specie for our notes; in one instance we know were bought with Philadelphia notes, and John Haldeman drew $8,000 at one time, when the pressure for specie was felt by most of the banks in the state. To enable us to meet these several draws, and to keep our paper at par in Philadelphia, we tried ot borrow on the company's note, but could not, when *Wm. Wright* got his own notes, for *ten thousand* dollars, endorsed by *Edward Wilson*, discounted at the bank of the United States, and employed the nett proceeds thereof for our use, for the purposes aforesaid, and renewed the said note until it suited *Edward Wilson* to take up the same, and which this office did not redeem until a few weeks since.

Thus, it appears that the accommodations were reciprocal between *Wm. Wright* and this company. There were other members of the board who borrowed money on their own private responsibility for the use of the company. Amos and Henry Slaymaker transferred to this company a judgment obtained from one of the parties of the *Wrightsville* canal compay on account of the money borrowed by *Wm. Wright* for said company, which, when paid, will not only pay all that is due from *Wm. Wright* and *Henry Slaymaker* to this company, but leave a balance of about $2,000 in their favour.

When the money was borrowed by *Wm. Wright*, it was paid to Henry Slaymaker the contractor with said company, for digging the said canal, &c. as appears by his receipts.

In answer to the objection made in the report to the resolution of the board, passed the 16th of Sept. 1819, we respectfully inform the Stockholders, that

we considered, and still consider, the company bound in good faith, by the resolution of the 17th of June, 1813, confirmed by a By-Law of the Stockholders passed July following, to receive the new stock and refund all the monies paid thereon, by the treasurer, on demand.

The great object which the board had in view in passing the resolution at that time, was to enable the Company to comply with the one of the 17th of June, 1813, without the risque of exposing our want of law for collecting our debts, even to the Stockholders.

We accordingly applied to James Buchanan, Esq. to know whether it was legal for the Board to receive it in payment of debts due to the Company, when we received the following answer:

Lancaster, 13th of Sept. 1819.

The question upon which you were good enough to ask my opinion is, I believe, in substance, "*Whether the President and Managers of the Columbia Bridge, ought to permit the conditional Stockholders in that institution, who are the debtors of the Bank to a greater amount than their stock, to set off the amount of their stock against the debts due from them to the Bank, and take their bonds for the balance without waiting for the event of a trial by Law.*"

Upon this question, my opinion is decided in the affirmative, whatever might be the result of a legal investigation under present circumstances, this course of conduct would certainly be the dictate of sound policy, as its opposite would give such Stockholders,

if they were disposed to be dishonest, an unfair advantage. Should the President, Managers, and Company, commence suits against them, upon notes discounted, and the institution be declared illegal for banking purposes, then what would be its situation? the whole amount of debts due by such Stockholders to the company would be lost, whilst their interest in the bridge would still continue. After the By-Law upon which the bank is founded, shall be found to be illegal, it is left expressly in their option, whether they will continue Stockholders, or have their money refunded. It is therefore self-evident, that if the Company were to refuse to suffer them to make a set off and commence suits, in case the event should be unfortunate, they would place themselves in the power of men who, in all probability, would be exasperated by the prosecution of the law suit, and disposed to take every advantage.

Signed, JAMES BUCHANAN.

WM. WRIGHT, ESQ.

Whereupon, *Resolved*, that the *Treasurer* be, and he is hereby authorized and empowered to receive a transfer of all or any part of the new stock, in payment of debts due this Company: to take the said stock at par, and allow interest on the same since the first day of August, 1818, and take bonds for such balances as may be due to the Company, agreeably to the resolution of 26th of August, 1819.

Nov. 4, 1819, *Resolved*, that the *Treasurer* is requsted not to suffer any person or persons, stockholders in this institution, that are in any way indebted to this office, to transfer their stock, without first being approved of by the board.

It may be said that it would have been prudent to have called a special meeting of the Company. *We* might have done so; but we concluded that if we did call such a meeting, we should have to expose our want of authority for collecting our debts, and thereby enable such of our debtors as chose to avail themselves of our want of Law to compel payment. For strange as it may appear, there are those among the Stockholders whom you little suspect, that have appealed from the award of arbitrators, and such too as were members of the board when the money was loaned: in one instance, we were threatened by Robert Patton, that if we did not come under an engagement not to call on him till we first used all legal means to obtain payment of the other endorser, for a sum awarded by arbitrators, that he would appeal from the award. Robert Patton was the only endorser on the original note, and one of the Board when it was discounted.

On the 5th of July, 1813, when the aforesaid By-Law, as stated in our petition to the legislature was passed, the stockholders passed the following By-Laws:

2d. *Whereas*, many inconveniences, as well as injuries, to the interest of the Company, might arise from the President and Managers not having authority in the act of incorporation, to call special meetings of the Stockholders, as the urgency of the case might require: *therefore*,

Be it ordained and declared, that the President and Managers, or a majority of them, at any of their meetings, are hereby authorized and empowered, to call special meetings of the Stockholders, first giving

thirty days notice in one or more newspapers printed in Philadelphia, one printed in Lancaster, one printed in York, and one printed in Columbia, of the time and place of holding such meetings, and of the business to be *transacted* thereat.

At such meeting, when no notice was given for an election, the Stockholders elected John Haldeman as one of their managers. *This* is the very same John Haldeman who, Thomas Eagan stated to our committee, had requested him to write the aforesaid letter to *William J. Duane;* and who, when the books were first opened for the sale of Stock for building the bridge, subscribed for *ten* shares. *The first* election for officers was held in December, 1812, and on the 8th of April, 1813, he transferred his Stock to Henry Slaymaker. *This was* before the resolution for employing the surplus for *Banking purposes*, and before it was even known to the Stockholders that such a measure would be adopted. Lately, the said John Haldeman purchased *three shares of Stock* in this Company. *What caused* him to sell out when he did, and again purchase three shares in a Company which he strove to injure, we must leave to others to form their own opinion; we have formed ours.

As Thomas Eagan, in his letter to Wm. J. Duane, dictated, as he informed our company, by John Haldeman, thinks that it was very doubtful whether it would be profitable to have a bank attached to the Bridge, &c. If John Haldeman thought so, why did he subscribe so largely to the Columbia Bank of Pennsylvania, included in the general Banking law to be established at Columbia?

We were induced to change the resolution for taking of bonds payable in 90 days, to one of Aug. 26, 1819, for making them payable in 5 equal annual payments, because we could not prevail on our debtors generally to give us bonds payable in so short a time; we had, in some instances, to get members of the board, who were known to have money to spare, to propose to our debtors to lift their debts at the office and take their bonds payable in one year from that time, when they gave a check on the Treasurer for the amount of the debt, and deposited the Bond for collection to answer the check; thus baffling our debtor from availing himself of our want of Law, to compel payment; we were advised in the first instance to take bonds by Charles Smith, Esq.

The following report of a Committee, appointed to consider of the propriety of making a dividend, will account for allowing interest on the stock received in payment of Debts, &c.

August 5, 1819, and after discount business, the following preamble and resolution was adopted:

Whereas, by the act of Incorporation and by-laws of this Company, the President and Managers are directed and required to declare dividends of the clear profit on the first Mondays of February and August, in each year; and on reference to the statement of tolls and discounts received, it would appear, that after deducting all expenses, there would be a surplus sufficient to warrant such a measure: but when the peculiar situation of the institution is taken into consideration, the Banking part of it having been by law declared illegal, so that great caution is required to be used in the collection of monies loaned, repeated

calls on the debtors having been made, yet few regarding them, and to enforce payment at this time, it is feared, would be attended with fatal consequences.

And whereas, all the funds that could possibly be collected for some time back were scarcely sufficient to redeem the paper of the company and liquidate a balance due the United States Bank;* and it is found, that it would be utterly impracticable at this time to pay out a dividend in any other paper than that of the Bridge Company, which would throw an amount into circulation that could not possibly be redeemed with specie, or foreign paper, which would inevitably tend to injure seriously the credit of this institution. Under the above view of existing circumstances, the President and managers have deemed it adviseable and proper to pass the following Resolution, viz.

Resolved, unanimously, that it is inexpedient and highly improper to declare a dividend at this time.

If we had paid a Dividend at that time, in our own paper, it must have depreciated; which we always strove to prevent and (except our small notes, they were always taken at the Bank of Pennsylvania. *We* think it highly improper for banks to declare dividends, that do not keep their paper at par: if any lose it ought to be the Stockholders.

From this it appears that there were funds sufficient to have made a dividend if it had been in cash, but as it was in discounted notes, it appeard to some of the Board that it was justly due to each Stockholder,

* *This balance was due on account of* $17,000 *of our notes received at that Bank from Collectors of United States' revenue.*

and thought as they were willing to pay off their stock, notes, and other Debts, on which interest was due, that they ought to have interest; and if we had offered to transfer to either of you an indiscriminate proportion of our claims on our debtors, before the law of last Session was obtained for collecting our debts, would you have accepted them in payment for your new stock, even if we had allowed you interest? we presume not. We offer this merely as a reason for allowing interest, &c.

The Board were divided, some thought the whole surplus of between 40 and $50000 ought to be divided; others, that no interest should be allowed: the plan we adopted meeting with general, though not unanimous approbation of the board, was adopted. *We still* have a surplus of about $40,000; we have redeemed all, or nearly all, our notes, which amounted to about $200,000; and what Company, that had Law in their favour, could, during such difficult times, have done much better? *We* can further add, that agreeably to the report of a very judicious Committee, made shortly before the Resolution of the 16th of Sept. 1819, was passed, we have good reasons to believe there will be but little loss on the outstanding debts.

If the new stock is to be redeemed, as we contend it ought to be, and all monies paid thereon refunded by the treasurer on demand, we cannot conceive on what principles of equity the Managers are to be excluded from the common privileges that other stockholders are entitled to. If it is contended that we ought not to take new stock in payment from such as should be honest enough to pay their debts to

Company, without the aid of Law, we contended the company aught to be equally honest and refund, the money received for the new stock, even if it should appear that such Stockholders have not Law to compel the Company to redeem it. *We*, therefore, under every view of the subject, which we are able to take, think that we have acted correctly in every subject.

Censure comes with but an ill grace from one of the committee, after having paid off his own debts with his stock, and included the interest. A privilege granted by the Board and for which he joins in censuring the Board for granting, as did many others who were not of the committee.

By the single purchase and sale of United States, Bank Stock, we cleared to the Company $15 or 16000 for which the Committee forgot, in their zeal to promote the interest of the Company, to credid us with.

We apprehend the Committee did not fully understand the subject referred to them in all its parts; we are therefore willing to excuse them, though we think it would have been more correct, to have given the Board an opportunity of explaining their transactions before they made the report to the stockholders.

When they have an opportunity of seeing this reply, we think it will convince every candid mind, who is disposed to stand open to conviction, particularly when he takes a view of the very many complicated difficulies which we had to encounter, that we done the best we could to get the money, which was loaned, secured to the Company without the aid of Law; and we think the stockholders in their individual capacity must wonder how we succeeded in getting thus far extricated from such embarrassments.

This we attribute, in a great measure, to the lenity with which we treated our debtors; certainly it must be admitted there is something due to the honest man, who would not avoid himself of the want of Law on our part; we felt ourselves bound in honour and in justice to indulge such, as far as practicable.

When people were willing to pay us honestly, provided we would give them time, we were induced to do as well for the reasons already stated as from motives of policy to induce others to follow their example; if we had pressed them, had we not much stronger reason to apprehend that opposition would have been made to defeat our application to the Legislature at last session, than we could, to have suspected one who had no apparent motive for making the opposition which we have already stated? We fear there were many, who only wanted to be put in mind of such a step to have made the attempt, and which probably would have been the case, if we had called a special meeting of the company previous to obtaining said law.

When the law was obtained, we ceased to receive the stock in payment, and called a special meeting, when William Wright proposed notifying the company for an election, agreeably to the second By-law of the company, passed 5th of July, 1813, (copied on the 33th page of this reply, to choose a President in his place, and had prepared a statement of the circumstances which rendered his resignation expedient; but the Board fearing that so public an exposure of the cause of his resignation might injure our suit with Kline and Herr, thought it most prudent to decline giving the information relative to electing a

President; concluding that nothing would suffer till the next general election, as the law provides, in the absence of the President, the appointing of a Chairman, &c. We do not apprehend that the old stockholders can have any cause to complain of the resolution of the 13th of September, 1819, for receiving new stock in payment of debts; they have already received dividends amounting to twenty-two dollars on each share of stock, which could not have been done, if they had not had the use of the monies raised on account of the sale of new stock: and what other Bridge in the state has paid half that sum in the same length of time.

Before we were compelled by the Legislature to wind up the banking part of the institution, we paid into the treasury of the Commonwealth, $17,100.

Why the new stockholders complain, we cannot conceive. There is nothing which compels them to give up their stock either in the resolution of the 17th of June, 1813, or that of the 16th of September, 1819; the latter only provides a ready mode for complying with the provisions of the former, and would enable the Board to close the concerns of the company much sooner, and thereby get rid of the expense necessarily attached to the institution in its present form.

One positive proof that the old stockholders have been benefited by the resolution of the 17th of June, 1813, is, that by the company's having the use of the money by the sale of new stock, there is a large surplus fund provided, besides making the aforesaid dividends; and without the use of this money, we could not have made one single dividend to this day,

and perhaps for many years to come. The fact is, that the company would have been, when the roof was finished, about $70,000 in debt.

If the Board had been disposed to have acted a dishonorable or a dishonest part, as insinuated by the report of the committee, we had an opportunity, by suffering our paper to have depreciated 30 or 40 per cent. below par, and speculated on it ourselves.

But we spurn with indignation such an idea; for we considered ourselves employed by a company, who meant to redeem every pledge. We therefore issued our paper with a view of redeeming it; as we did to redeem our new stock, if it ever should become illegal to employ it in an office of Discount and Deposite. Some of the company may think we ought to have suffered it thus to have depreciated, and bought it in for the benefit of the institution; we had too much regard for our own private character and the obligation due to the community, to have acted in such a manner.

We therefore exerted ourselves to keep it at par, by every honest and fair means in our power:—we paid specie at all times that any bank in the state paid it—that if we were banking contrary to law, the public should not lose by it; notwithstanding all the difficulties we had to encounter, during a period of six years, a retrospect of which fill our minds with astonishment, to think how we have got through as we have done.

It is our decided opinion, that if a suit is brought for the recovery of a debt due the company, if the debtor can procure new stock to the amount of the debt, there will not be found a jury in the county but

what will find a verdict in favour of the stock being a good set off in payment of the debt, with interest on the stock from the time payment is regularly demanded of the treasurer. If we are correct in this view of the subject, how could we have done better than by receiving it in payment of debts? Contrast our present situation with what it was on the 16th of September, 1819: we were then subject, if we brought a suit, to have it stricken off the docket with treble costs, besides losing the debt. Surely then, every prudent mind must see the propriety of the course we pursued.

To conclude—Suffer us again to call your serious attention to the situation of the company, when the resolution of the 16th of September, 1819, was adopted; near $200,000, loaned to individuals, and agreeably to the opinion of Horace Binney and Joseph Hopkinson, Esq's. we had not authority to compel the payment of one cent. Thus situate, what were we to do, but to follow the dictates of our own judgment, supported by the advice of good counsel, and, as we apprehend, by the By-law of the 5th of July, 1813, which ordains and declares, "that the President and Managers of the company, be, and they are hereby authorised and empowered to employ the whole balance of the capital stock of the company on loan, or discount, or purchase, or otherwise, as to them, or a majority of them, shall appear best adapted to promote all the objects of the said act of incorporation. With these general powers, we conceive we were vested with authority to *purchase* the aforesaid capital stock of the company, which was certainly adopted to promote one of the objects of the act of incor-

poration—the retaining a fund for the support of the Bridge, which could not be effected without collecting the debts due to the company, and which the law of the commonwealth did not enable us to do.

On taking our leave of the management of this institution, we have the satisfaction to know from the most minute retrospect of the past, that we have faithfully discharged the arduous duties committed to our care; we do not mean to infer that we have been infallible in our judgment, but we are not conscious of having omitted one opportunity wherein we could have promoted the interest of the company. The law for collecting our debts is obtained; the want of which constituted one of our principal embarrassments; this difficulty being removed, we return the management of it with pleasure into the hands of the stockholders unincumbered, and with an increased surplus fund of about $40,000.

The stockholders will remember, that the Board, except the President,* never received any compensation for their services.

* Bridge Office, June 23, 1820.

At the request of *William Wright*, Esq. late President of this institution, I have examined the books, in order to ascertain what amount was paid or allowed him on account of salary as President, and for his expenses incurred in frequent trips to Philadelphia, Harrisburg, York, and Lancaster, and other places on the business of the company, from the 28th Dec. 1811, to the 1st October, 1819, a period of nearly eight years, and have found the amount to be only three thousand and twenty-nine dollars and fifty-seven cents.

Wm. P. BEATTY, *Treasurer.*

Agreeably to the report of the committee of the stockholders, held on the 4th of May last, the board of managers were recommended to take the opinion of an able counsellor: they have, accordingly, taken the opinion of Horace Binney, Esq. of Philad. who states, that the proceedings of the board (so much censured by the report of said committee) were legal; but that the election, at which C. Brenneman was elected president, and John Haldeman and William Viccary managers, was entirely illegal.

Such parts of the foregoing as were transacted when certain members of the Board were absent, can only be subscribed to from the information of the other members; yet we all believe the general statement to be correct, as reference to our minutes will make appear.

Columbia, 6th mo. (June,) 1820.

William Wright,
John Evans,
James Wright,
Robert W. Houston,
John Barber,
John Forrey, Jun.
William Kirkwood,
Jacob Gossler.